IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.93 OF 1999

DATE OF DECISION: NOVEMBER 28, 2007

Devi Ram

.....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Harkesh Manuja, Advocate for
Mr. Vikas Kumar, Advocate,
for the petitioner.

Mr. Yashwinder Singh, AAG, Haryana,
for the respondent.

****

RANJIT SINGH, J. (ORAL)

The petitioners, who have filed two separate revisions bearing Criminal Revision Nos.93 of 1999 (***Devi Ram Vs. State of Haryana)*** and 100 of 1999 (***Devi Shish Ram Vs. State of Haryana),*** were convicted for an offence under Section 408 IPC and sentenced to suffer RI for one year coupled with fine of Rs.2,000/- each long long ago on 26.3.1993.

The incident alleged against the petitioners is dated 13.6.1986,

when Manglu Ram, Sarpanch of Village Nawada, filed a written complaint at Police Station Sadar Ballabgarh, alleging that 18-20 agriculturists of his village had taken loan from Co-operative Bank, Machhgarh, where Shish Ram was the Secretary and Devi Ram was the Salesman. They had been depositing the instalments of loan amount with the petitioners. Receipts were, however, issued only for a few instalments and accordingly they were alleged to have embezzled a sum of Rs.50,000/- to Rs.70,000/- of the poor agriculturists. After investigation, petitioners Devi Ram and Shish Ram were prosecuted. Both the petitioners were convicted and sentenced, as already noticed. They remained unsuccessful in appeal. They have impugned both the orders by filing separate two revision petitions before this Court, which are being decided by this common order.

Counsel representing petitioner, Shish Ram, says that the petitioner is no more but his son is prosecuting the present petition on being substituted as his legal heir. He further says that outcome of this petition would determine further fate of the son of late Shish Pal as he wishes to seek appointment on compassionate grounds.

Counsel representing the petitioners say that they do not wish to press the present petitions on merits and would only restrict their prayer for release of the petitioners on probation. It is pleaded that the petitioners have faced this prosecution for over 21 years. Counsel accordingly submits that petitioner, Devi Ram, has suffered enough and has also learnt a lesson in life. According to the counsel, he is now a reformed person. Counsel also submits that while considering the quantum of sentence, the appellate Court did not

consider the aspect of releasing the petitioners on probation, they being the first offenders. The Hon'ble Supreme Court in the case of ***Chandreshwar Sharma Vs. State of Bihar,*** JT 2000(2) SC 36 has held that reading of Sections 361 and 360 of the Code together would indicate that in any case where the courts have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of said provision then it shall record in its judgment the specific reasons for not doing so. This apparently has not been done by the Appellate Court and thus the court has over looked the provisions of Sections 360 and 361 Cr.P.C. It can be said that the Appellate Court appears to have not performed its mandatory duty.

The petitioners in the present revisions are facing prosecution since 1986. Upon being convicted, petitioners, Devi Ram and Shish Ram (till his death) is/was under the threat of sentence since 1993. Their appeal was also dismissed in the year 1999 and the present revisions are pending for nearly 8 years now. It may not sound fair at this belated date to require petitioner, Devi Ram, to undergo the sentence. He appeared to have suffered enough. One of the person punished is no more. What more can be a punishment to him or his family?

Thus, while dismissing the revision petitions on merits, petitioner, Devi Ram, is ordered to be released on probation for keeping a good conduct instead of sentencing him. He will appear before the Chief Judicial Magistrate, Faridabad, and enter a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for this period shall be executed before the Chief Judicial Magistrate,

Faridabad, within one month of this order. Sentence awarded to late Shish Pal is set-aside and he shall be deemed to have been released on probation to lesson the sufferance of his family.

November 28 ,2007 **(RANJIT SINGH)**
khurmi **JUDGE**